

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

TUESDAY, THE 29TH MAY 2007 / 8TH JYAISHTA 1929

CRL.A.No. 323 of 2005()

SC.400/2003 of SESSIONS COURT, THALASSERY
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APPELLANT:

K. SUBASH, S/O. VINODAN,
CONVICT NO.1425, CENTRAL PRISON,
KANNUR.

BY ADV. SRI.C.KHALID
SRI.N.GOPINATHA PANICKER
SRI.R.O.MUHAMED SHEMEEM
SRI.T.P.SAJID

RESPONDENTS:

STATE OF KERALA.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 29/05/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

V. RAMKUMAR, J.

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Crl. Appeal No. 323 of 2005

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Dated, this the 29th day of May 2007

JUDGMENT

In this appeal preferred from the Central Prison, Kannur, the appellant who was the accused in S.C. 400 of 2003 on the file of the Addl. Sessions Court, Thalassery for an offence punishable under Sec. 302 I.P.C. challenges the conviction entered and the sentence passed against him for an offence punishable under Part II of Sec. 304 I.P.C.

2. The case of the prosecution is that on being infuriated by the refusal on the part of deceased Panchali to accede to the demand for money made by the accused, the accused who is the grandson of the said Panchali committed murder by knowingly and intentionally causing her death some time between 8 a.m. and 9 a.m. on 31-1-2003 at Muzhappilangad amsom and desom by stamping her over her chest and stomach. The accused has thereby committed an offence punishable under Sec. 302 I.P.C.

3. On the appellant pleading not guilty to the charge framed against him by the court below for the aforementioned

offence, the prosecution was permitted to adduce evidence in support of its case. The prosecution altogether examined 12 witnesses as P.Ws 1 to 12 and got marked 6 documents as Exts. P1 to P6 and 3 material objects as MOs 1 to 3.

4. After the close of the prosecution evidence, the accused was questioned under Sec. 313 (1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He stated that he loved his grandmother more than anybody else in the world and he does not know as to how she died and that somebody was deliberately trying to falsely implicate him in this case for the death of his grandmother.

5. Since the court below did not consider this a fit case for recording an order of acquittal under Sec. 232 Cr.P.C., the appellant was called upon to enter on his defence and to adduce any defence evidence which he might have in support thereof. He did not adduce any defence evidence.

6. The learned Addl. Sessions Judge, after trial, as per judgment dated 28-9-2004 acquitted the appellant of the offence punishable under Sec. 302 I.P.C. but convicted him of the

offence of culpable homicide punishable under Part II of Section 304 I.P.C. and sentenced him to rigorous imprisonment for 7 years allowing him set off under Section 428 Cr.P.C. It is the said judgment which is assailed in this appeal.

7. I heard Adv. Sri. C.Khalid, the learned counsel who defended the appellant and Adv. Sri.K.S. Sivakumar, the learned Public Prosecutor who defended the State.

8. The only point which arises for consideration in this appeal is as to whether the conviction entered and the sentence passed against the appellant are sustainable or not ?

THE POINT:

9. 78 year old Panchali is the woman who met with her death in the occurrence that took place in this case. P.W.1 (Dasan) and P.W.2 (Chandrika) are the children of Panchali. The accused at the relevant time was aged 29 years. He is the son of P.W.2 (Chandrika). According to the prosecution, on account of the ill-will which the accused was harbouring towards his grandmother who had not acceded to his demand for money, the accused had knowingly and intentionally caused her death by stamping her on her chest and abdomen.

10. There are no eye-witnesses to the occurrence. The prosecution rests on circumstantial evidence to prove the guilt of the appellant . P.W. 3 (Hassan) and his wife P.W.4 (Beepathu) are neighbours. P.W.5 (K.V. Sajeewan) is an attester to Ext.P2 inquest report. P.W.6 (Chandran) is an attester to Ext.P3 scene mahazar. P.W.7 (K.V. Lakshmanan) is the Village Officer of Muzhappilangad Village. He proved Ext. P4 site plan. P.W.8 (Suresh Kumar) was the head constable of Edakkad Police Station. He recorded Ext.P1 F.I. statement and registered Ext.P1 (a) F.I.R. P.W.9 who was the Sub Inspector of Edakkad Police Station conducted the main part of the investigation. P.W.10 (Dr. Gopalakrishna Pillai) was the police surgeon who conducted autopsy over the dead body of deceased Panchali and prepared Ext.P6 postmortem certificate as per which death of Panchali was on account of the blunt violence sustained on the chest and abdomen. P.W.11 was the Circle Inspector of Police who prepared Ext.P3 scene mahazar, arrested the accused on 2-2-2003 and produced him before the Magistrate. P.W. 12 who was the Circle Inspector of Police, Kannur Town Police Station, after verifying the investigation conducted by P.W.11, laid the

charge before court.

11. As mentioned earlier there are no eye witnesses to the occurrence. But the testimony of P.W.1 who is the maternal uncle of the accused would go to show that at about 8 .30 a.m. on 31-1-2003 the accused was seen loitering on the courtyard of the house of the deceased in an excited and violent mood. P.Ws 3 and 4 who are husband and wife and neighbours to the house of the accused had heard loud screams emanating from the house of the deceased and when they came and peeped into the bedroom of Panchali through the window they saw Panchali lying motionless in the cot and the accused standing near her. It is thus in evidence that the accused was last seen in the company of the deceased and when the deceased was seen dead on her cot and the accused standing near her in the same room, an explanation was due from the accused as to the circumstances under which the deceased met with her death. Except a total denial, the accused had no sort of explanation as to how 78 year old Panchaly whom he allegedly loved him had her encounter with death.

12. It is true that from the testimony of P.W.1 to the effect

that about six years prior to the occurrence the accused was treated for some mental disease, an attempt was made by the defence to feebly contend that the accused was by reason of unsoundness of mind incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to law so as to bring the case within the fold of Sec. 84 I.P.C. But as rightly observed by the trial judge there was no reliable material produced to show that the accused was suffering from insanity either immediately before or at the time of commission of the crime. From the circumstances spoken to by P.Ws 1 to 4 it could legitimately be concluded that it was the accused and no one else who had caused the death of Panchali. Going by the injuries on the body of Panchali there is nothing to suggest that the culpable homicide was murder committed with the requisite intention. On the contrary, as rightly concluded by the trial judge the culpable homicide was one from which it could legitimately be inferred that the accused had the requisite knowledge that the bodily injuries inflicted by him were likely to cause the death of Panchali. Four of the ribs on the right side and 2 of the ribs on the left side of Panchali were broken. There were clear

injuries on the lower abdomen and kidney indicating the application of blunt force on the chest and abdomen of the old women. The medical evidence indicates that the deceased was a decrepit and frail woman who could easily be done away with by the accused who had a thick frame and who was aged only 29 years. The conviction under Part II of Section 304 I.P.C. was thus rightly recorded by the trial judge and I fully endorse the conclusion reached by the trial court. The conviction is accordingly confirmed.

13. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the appellant. Even though the defence was not able to establish the plea of legal insanity to the requisite extent, it is in evidence that the appellant had been suffering from some morbid mental condition which had warranted treatment before a Psychiatrist. After the arrest of the accused on 2-2-2003 he has been in judicial custody throughout the proceedings culminating in his conviction. He has been in custody till 15-3-2006 when eventually this court suspended the sentence and enlarged him on bail. During his custody in the Central Prison, Kannur also he had been undergoing psychiatric

treatment. He is a coolie by avocation. He has been in the prison for more than three years. Considering the above facts and circumstances in the perspective of the decision reported in AIR 1998 SC 1190 - Ramprakash Sing v. State of Bihar, I am of the view that the incarceration already suffered by the appellant will be sufficient to meet the ends of justice. Accordingly, confirming the conviction recorded against the appellant I modify the sentence imposed on him by directing that the imprisonment already undergone by him from 2-2-2003 till his eventual release on bail on 15-3-2006 shall be the sentence to be awarded for his conviction under Part II of Sec. 304 I.P.C.

In the result, this Appeal is disposed of confirming the conviction entered but modifying the sentence imposed on the appellant as indicated above.

V. RAMKUMAR, (JUDGE)

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